

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
5:22-CV-277-BO-KS

LYNN BERNSTEIN )  
Plaintiff, )  
v. )  
GARY SIMS, individually and in his official )  
capacity as Director of Elections for the Wake )  
County Board of Elections; and WAKE COUNTY )  
BOARD OF ELECTIONS )  
Defendants. )

## **DEFENDANTS' MOTION TO DISMISS**

NOW COME the defendants, GARY SIMS, individually and in his official capacity as Director of Elections for the Wake County Board of Elections, and WAKE COUNTY BOARD OF ELECTIONS by and through counsel, pursuant to Fed. R. Civ. P. 12(b)(6) hereby Move to Dismiss Count I styled “Violations of the First Amendment” pursuant to 42 U.S.C. § 1983; Count II styled “Violations of the Equal Protection Clause of the Fourteenth Amendment” pursuant to 42 U.S.C. § 1983; Count III styled “Violations of the Due Process Clause of the Fourteenth Amendment” pursuant to 42 U.S.C. § 1983; Count IV styled “Retaliation for Exercising Rights Guaranteed by the First Amendment” pursuant to 42 U.S.C. § 1983; Count V styled “Violations of the North Carolina Constitution”; Count VI, “Common Law Assault”; Count VII, plaintiff’s state law claim styled “Common Law Defamation” and Count VIII styled “Declaratory Judgment Relief” on the grounds that these Counts fail to state claims upon which relief may be granted.

WHEREFORE, defendants pray the Court enter judgment dismissing this case as to all defendants with prejudice and for any other relief as to the court may seem just.

Respectfully submitted this the 22nd day of September, 2022.

*/s/ Scott W. Warren*

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Scott W. Warren, NCSB # 14349

County Attorney

*/s/ Roger A. Askew*

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Roger A. Askew, NCSB # 18081

Senior Deputy County Attorney

*/s/ Allison P. Cooper*

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Allison P. Cooper, NCSB # 34160

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The undersigned hereby certifies that the foregoing **DEFENDANTS' MOTION TO DISMISS** was electronically filed with the Clerk of Court using the CM/ECF filing system and served via electronic transmission through the Court's CM/ECF system in accordance with Rule 5(b)(2)(D) of the Federal Rules of Civil Procedure and applicable local rules upon the CM/ECF participants:

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This the 22<sup>nd</sup> day of September, 2022.

/s/ Roger A. Askew

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